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BY E-FILING

Rosemary Ciavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P. O. Box 3265
Harrisburg, PA 17105-3265

Re: *Petition of Duquesne Light Company for a Waiver of the Three Business Day Switching Requirements Under 52 Pa. Code § 57.174*
Docket No. P-2014-2448863

Dear Ms. Ciavetta:

Enclosed for filing in the above referenced matter please find the Answer of Retail Energy Supply Association to Duquesne Light Company Petition for Temporary Waiver of Billing Regulations. Copies will be provided to counsel for Duquesne Light and also pursuant to the service list included with Duquesne Light's Petition.

Please feel free to contact me should you have any questions.

Sincerely,~

A handwritten signature in blue ink, appearing to read 'Brian R. Greene', written in a cursive style.

Brian R. Greene

BRG/wcd
Enclosures

c: Service List

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company for :
a Waiver of the Three Business Day : Docket No. P-2014-2448863
Switching Requirements Under 52 Pa. :
Code § 57.174 :

**ANSWER OF RETAIL ENERGY SUPPLY ASSOCIATION TO DUQUESNE LIGHT
COMPANY PETITION FOR TEMPORARY WAIVER OF BILLING REGULATIONS**

Pursuant to 52 Pa. Code §§ 5.61(a) and 1.56(b), the Retail Energy Supply Association (“RESA”)¹ submits this Answer in response to the Petition filed by Duquesne Light Company (“Duquesne Light”) involving its proposal to implement accelerated switching as required by 52 Pa. Code §§ 57.171-57.180. Duquesne Light seeks to implement interim processes (either the “Phase 1” solution or, if that is unavoidably delayed, the “Customer Protection Back-Up Solution”) by January 16, 2015 while it works toward full implementation (“Phase 2”) consistent with the regulations by July 31, 2015. Duquesne Light seeks waivers of the Commission’s regulations to the extent necessary to implement its proposals.

RESA is a strong proponent of accelerated switching and appreciates the efforts of Duquesne Light (and other EDCs) to implement internal processes to comply with the implementation deadline required by 52 Pa. Code § 57.180. Although this proceeding is limited to Duquesne Light’s requested waiver, RESA must first express its concern regarding the lack of

¹ RESA’s members include: AEP Energy, Inc.; Champion Energy Services, LLC; Consolidated Edison Solutions, Inc.; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc. dba IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent only those of RESA as an organization and not necessarily the views of each particular RESA member.

any real opportunity provided to EGSs to offer any input during the development phase of all of the EDC's accelerated switching plans. Importantly, RESA is concerned about the decisions of all of the major EDCs to not allow use of the electronic data interchange ("EDI") enrollment request to include an effective date for the enrollment.² However, given RESA's support of accelerated switching, RESA is cautious about raising any concerns or objections to the individual EDC implementation plans. On the one hand, RESA is eager for accelerated switching to become a reality in Pennsylvania – the first retail market outside of Texas to boldly adopt this customer-oriented vision. On the other hand, accelerated switching has significant operational, business process, contractual and hedging practice impacts for EGSs and RESA is particularly concerned about the potential negative and unintended consequences that may flow from all of the EDC's chosen implementation methods.

Given the importance of this issue and its direct impact on EGSs and their customers, RESA's members expected a much more inclusive and collaborative process to implement accelerated switching. Although very high level updates were provided on occasional CHARGE and EDEWG calls, RESA is unaware of any structured opportunity for EGSs to provide input into the EGSs accelerated switching plans during the development stage. If this opportunity to provide input had been provided, RESA's concerns regarding Duquesne Light's proposal

² UGI Utilities, Inc. – Electric Division, a smaller EDC, seeks a waiver of the regulations for a number of reasons including the fact that the legacy customer information system it shares with its sister natural gas distribution utilities is in the early stages of a planned systems replacement project, the low levels of shopping in the service territory and the fact that no complaints were received regarding variable rate products. *Petition of UGI Utilities, Inc. – Electric Division to Defer Implementation of Portions of Revised Standards For Changing a Customer's Electric Generation Supplier at 52 Pa. Code §§ 57.174 and 57.180 and to Implement an Alternative Method to Address Certain Variable Rate Disputes*, Docket No. P-2014-2449397, Petition filed October 23, 2014. RESA would recommend the EDI protocols discussed herein be implemented as part of UGI's system replacement project. Regarding UGI's temporary proposal, to address customer concerns retroactively (see UGI Petition at ¶ 19), RESA does not oppose this approach at this time so long as – consistent with UGI's proposal – both the supplier and the customer agree with the selected resolution of the customer's complaint.

specifically as well as concerns about how not using an EDI process to include an enrollment effective date might have been reasonably addressed.

Nevertheless, regarding Duquesne Light's Petition, RESA does not support implementation of the Customer Protection Back-Up Solution as proposed because it creates an anticompetitive and discriminatory preference for default service by allowing only shopping customers to return only to default service in three days. The concerns are exacerbated by Duquesne Light's planned promotion of the Customer Protection Back-Up Solution which effectively result in marketing of default service. While RESA recognizes that it would only be implemented if Duquesne Light cannot implement Phase 1, RESA recommends that the Commission either: (1) grant Duquesne Light a waiver of the implementation deadline of December 15, 2014 as may be necessary to implement Phase 1 (if Duquesne Light determines it cannot implement Phase I by December 15, 2014); or alternatively, (2) require Duquesne Light to modify its Customer Protection Back-Up Solution to be utilized as a "last resort" customer service tool that is not actively promoted.

In addition to this program modification, RESA recommends that the Commission direct Duquesne Light to implement EDI protocols that would allow EGSs to specify the enrollment effective date. This will accomplish the following:

- Allow customers to select a future enrollment date;
- Allow EGSs to better operationalize enrollment effective dates;
- Avoid significant customer dissatisfaction over the imposition of early termination fees; and,
- Allow EGSs to minimize enrollment delays while also ensuring that the 3 day rescission period is honored.

I. RESA'S INTEREST IN THIS PROCEEDING

RESA is a trade association of power marketers, independent power producers, and a broad range of companies within the Mid-Atlantic marketplace, each of whom support the electric services industry and seek to develop a more competitive power industry. RESA members are licensed to sell electric energy in the markets of Pennsylvania's major EDCs, including the service territory of Duquesne Light. RESA members will be substantially affected by the outcome of this proceeding in the following significant ways.

First, the Commission has made clear to EGSs that they must "review their internal procedures to ensure that they are in compliance with the accelerated switching regulations by December 15, 2014."³ EGSs' ability to comply with this requirement is directly dependent on ensuring that their internal systems are capable of accommodating an EDC's selected method for effectuating an accelerated switch. In other words, EGSs need to know what information and in what format an EDC needs to effectuate an off-cycle switch. Therefore, the Commission's decision here will have a substantial impact on the ability of EGSs to fulfill their own obligations with respect to accelerated switching.

Second, EGSs have an interest in ensuring that they understand the implementation process selected by each EDC so that they can accurately communicate the process to the customer at the time the customer chooses to select the EGS. As explained further below, requiring all switches to be processed through the accelerated switch methodology may increase the exposure of customers to early termination fees or liquidated damages clauses; and, therefore educating customers about these risks is important. For these reasons, ensuring adequate

³ *Accelerated Switching Regulations at 52 Pa. Code §§ 57.171-57, 180*, Docket Number L-2014-2409383, Secretarial Letter dated September 8, 2014.

education of the EGS about an EDC's process will enable the EGS to address any subsequent customer issues or questions that may occur as a result of the process.

Third, as competitive suppliers, EGSs have a general interest in ensuring that the competitive marketplace is reasonably functioning from the viewpoint of a customer. If a customer is confused about the switching process or an EDC appears to be promoting default service such confusion could lead to dissatisfaction with the shopping experience and create barriers to entry for EGSs.

For all these reasons, RESA has an interest in this proceeding and respectfully requests that the Commission consider its input in addressing Duquesne Light's Petition.

II. RESA'S CONCERNS REGARDING DUQUESNE LIGHT'S APPROACH

RESA is fully supportive of accelerating the switching time in order to facilitate a more customer-oriented shopping experience and recognizes that the Commission did not provide specific technical guidance to the EDCs about how to implement the new accelerated switching regulatory requirements. A result of this is that most of the major EDCs (with the exception of PECO Energy Company)⁴ are proposing to implement an interim solution permitting one off-cycle switch coupled with one manual switch pending the EDC's implementation of the more permanent solution which would make multiple off-cycle switching per billing period available to all customers.⁵

⁴ PECO is proposing to effectuate accelerated switching by issuing a new bill whenever a customer switches to a new supplier. *See Petition of PECO Energy Company For Temporary Waiver of Regulations Related to the Required Days In A Billing Period*, Docket No. P-2014-2446292, Petition filed October 1, 2014 (decision from Commission is pending).

⁵ *See Petition of PPL Electric Utilities Corporation for Temporary Waivers from Certain Technical Requirements of 52 Pa. Code §§ 57.174 and 57.179*, Docket No. P-2014-2445072, Petition filed September 25, 2014 (Secretarial Letter dated October 23, 2014 approved interim proposal but a final Commission decision on the remaining issues in the petition is pending). *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Temporary Waiver of Technical*

While RESA generally does not oppose the implementation of an interim solution permitting a limited number of off-cycle switches pending the implementation of a more permanent solution allowing multiple off-cycle switches per billing period, in this proceeding, RESA recommends that the Commission's final order direct the following:

- Either: (1) grant Duquesne Light a waiver of the implementation deadline of December 15, 2014 as may be necessary to implement Phase 1 (if Duquesne Light determines it cannot implement Phase I by December 15, 2014); or alternatively, (2) require Duquesne Light to modify its Customer Protection Back-Up Solution to be utilized as a "last resort" customer service tool that is not actively promoted; and,
- direct Duquesne Light to implement EDI protocols that would allow EGSs to specify the enrollment effective date.

As explained further below, both of these recommendations are necessary to address the concerns RESA has identified regarding Duquesne Light's accelerated switching proposal.

A. Duquesne Light's Interim Proposal

Duquesne Light explains that it has "developed and will attempt to implement IT and business processes necessary to allow one off-cycle switch and one on-cycle switch for approximately 91% of its customer base. . . by December 15, 2014" (referred to as "Phase 1") Petition at 7, ¶11. This will be an interim step as Duquesne Light works to implement its more

permanent solution (referred to as “Phase 2”) which will enable all customers eligible to shop to make multiple off-cycle three business day switches per billing period. Petition at 15, ¶ 35.

Duquesne Light also explains that it is currently in the process of replacing and implementing a new Customer Care & Billing System to modernize it and to enable smart meter technology. Petition at 2. Because the updated system is scheduled to go live on November 28, 2014, Duquesne Light notes that there will be a very limited time between then and the December 15, 2014 accelerated switching implementation deadline. Petition at 2. As such, Duquesne Light cannot be certain that it will be able to implement the IT systems necessary for the Phase 1 solution between November 28, 2014 and December 15, 2014. Petition at 7, ¶11. Because of this, Duquesne Light offers an alternative plan if it cannot implement Phase 1 referred to as the “Customer Protections Back-Up Solution.” RESA does not support this alternative Phase 1 solution as proposed for the following reasons.

The Customer Protections Back-Up Solution would be available only for shopping customers to return to default service. Petition at 11, ¶23. In other words, a default customer wishing to shop or a shopping customer wishing to switch EGSs would not be able to avail themselves of the three day switching timeframe.⁶ This creates an unequal playing field between different switching types as switches to default service will be processed on a faster timeframe than switches to EGSs or between EGSs. The Commission has already found that “competitive generation markets can only develop and mature if consumers have free and direct access to the

⁶ While Duquesne Light does note that this approach would still reduce the time needed to switch to another EGS, it would still result in favoring the return to default service (because it could be processed faster).

competitive market, as contemplated by the Act.”⁷ Thus, a fair competitive market requires that all switch types, regardless of direction, be processed under the same rules and timelines.

An additional concern is Duquesne Light’s proposal to promote and advertise this capability. Petition at 12, ¶ 28. According to Duquesne Light, it would:

- Inform all customers who contact Duquesne Light about this capability; and,
- Provide public notice to customers – on its website, IVR and social media – to contact Duquesne Light if they have issues with a variable rate contract and need to make a switch

By advertising this approach, Duquesne Light is effectively promoting default service because the ability to switch in three days would only apply to returns to default service. As further support of Duquesne Light’s “promotion” of default service, Duquesne Light even states that a purpose of this alternative approach is to “protect” customers against EGS variable rate contracts. Petition at 12, ¶26. RESA strongly opposes this promotion of default service.

Nevertheless, RESA does recognize that there may be some limited specific situations which may require special treatment consistent with Duquesne Light’s approach. For example, a customer who has been slammed should have the ability to return to default service, or their selected EGS, as quick as possible. In fact, both PPL and FirstEnergy are proposing to implement a similar capability during their interim implementation phases. Importantly, though, both PPL and FirstEnergy are implementing it as a last resort customer service tool and neither EDC is actively promoting the capability to customers.

For all these reasons, RESA does not support implementation of the Customer Protection Back-Up Solution as proposed even though RESA recognizes that it would only be implemented if Duquesne Light cannot implement Phase 1. To address the concerns identified by RESA,

⁷ *Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service*, Docket No. P-00032071, Opinion and Order entered August 23, 2004 at 27.

RESA recommends that the Commission either: (1) grant Duquesne Light a waiver of the implementation deadline as may be necessary to implement Phase 1 (if Duquesne Light determines it cannot implement Phase 1 by December 15, 2014); or alternatively, (2) require Duquesne Light to modify its Customer Protection Back-Up Solution to be utilized as a “last resort” customer service tool that is not actively promoted. RESA’s alternative recommendation can be accomplished by directing Duquesne Light to not actively promote the process to the customers – through advertising or when the customer initiates a call to Duquesne Light. Rather, the customer contacting Duquesne Light should be advised that if he/she has already had an off-cycle switch, he/she must wait until the next billing cycle to switch (this is consistent with how PPL and FirstEnergy plan to address this situation during the interim period). Only if there is an extreme customer service problem that needs to be remedied (such as a slamming allegation or if the customer raises substantial objection), should the Duquesne Light customer service representative offer the Customer Protections Back-Up Solution.

B. Duquesne Light Should Implement EDI protocols that would allow EGSs to specify the enrollment effective date

RESA is concerned about implementing an accelerated switching process where all switches are processed as off-cycle switches. If all enrollment transactions are processed as off-cycle switches, some customers will likely be exposed to more frequent early (and inadvertent) cancellation penalties. Moreover, limiting off-cycle switches to once per billing cycle means that the EGS has no ability to know in advance whether its enrollment will be processed as an accelerated switch or as an off-cycle switch. Consider the situation where a customer has a regular meter read date of December 31. If an EGS receives, for example, an online enrollment request for a new customer on December 10th, the EGS – which is not currently serving the customer – does not know whether this new customer will be eligible for an accelerated, off-

cycle switch in the month of December. If the EGS transmits the enrollment shortly after the customer signs up online, such as December 13th, one of two things will happen. Under one scenario, the enrollment will be accepted as an off cycle switch and the customer's service will begin with the new EGS on December 17th. Under a second scenario, if the customer has already used its one off cycle switch that month, the enrollment will not become effective until the regular meter read date on December 31. The EGS cannot know in advance which scenario will occur. If the customer is under contract with its existing EGS through the December meter read date, December 31, the first scenario could result in the customer incurring an early termination fee. If the EGS could specify the enrollment effective date, the EGS can ask the customer to provide its current contract end date at the time of enrollment and then specify an enrollment effective date after this date to avoid any early termination fees for the customer.

Another benefit of this functionality is the management of the legal requirement that mass market customers have a three business day rescission period. Under the current plans, EGSs must manage the rescission period by delaying the initial enrollment transaction while waiting for the three business day rescission period to pass (because if an EGS sends the enrollment request before then and the customer chooses to rescind, the EGS cannot cancel the enrollment process). If the EGS could specify the enrollment effective date, then the EGS could initiate the enrollment immediately but transmit an effective date after expiration of the rescission period. If the customer chooses to rescind during this three day period, the EGS would transmit a rescind EDI transaction to cancel the pending enrollment.

Similarly, in the case of larger commercial accounts, they could be more frequently exposed to liquidated damages provisions if an EGS cannot specify the enrollment date. This is because a customer who selects a new EGS during the ending month of their current contract, is

much more likely to switch before their current contractual end date, which for most customers would currently be defined as the regularly scheduled meter read date. The following example illustrates this point:

- A customer originally signed up under a fixed price contract in January 2014 for a 12 month term. The customer's meter read date is January 29th. Currently, most EGSs define contract terms based on the regular meter read date. So, this customer would have a term extending through January 29th, 2015.
- If the customer shops and selects a new EGS during January 2015, they are likely to believe that if they switch in January, they will be honoring their existing contract. However, consistent with the way that all the EDCs have chosen to implement accelerated switching, if the customer's new EGS initiates the EDI enrollment transaction at any time before January 26th, the switch will happen before the customer's contracted end date.
- This may expose the customer to early termination fees or liquidated damages provisions for commercial contracts. In the case of large commercial customers, the mark to market loss associated with liquidating a partial month's worth of supplies can be substantial.

To address these concerns, customers who wish to avoid such fees should be permitted to define their switch effective date. Doing so is consistent with 52 Pa. Code § 57.173(2) which expressly requires the EDCs and EGSs to allow a customer to indicate an enrollment date in the future. Modifying the EDI enrollment transaction to permit the new EGS to specify the switch effective date would enable a customer to advise the new EGS of the existing contract end date and the new EGS can use this information to implement the enrollment in a way that avoids any early termination fees for the customer.

In sum, directing Duquesne Light to implement EDI protocols that would allow EGSs to specify the enrollment effective date would accomplish the following:

- Allow customers to select a future enrollment date;
- Allow EGSs to better operationalize enrollment effective dates;
- Avoid significant customer dissatisfaction over the imposition of early termination fees; and,

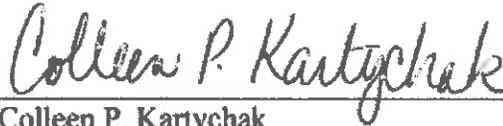
- Allow EGSs to minimize enrollment delays while also ensuring that the 3 day rescission period is honored.

III. CONCLUSION

RESA recommends that the Commission's final order direct the following:

- Either: (1) grant Duquesne Light a waiver of the implementation deadline of December 15, 2014 as may be necessary to implement Phase 1 (if Duquesne Light determines it cannot implement Phase I by December 15, 2014); or alternatively, (2) require Duquesne Light to modify its Customer Protection Back-Up Solution to be utilized as a "last resort" customer service tool that is not actively promoted; and,
- direct Duquesne Light to implement EDI protocols that would allow EGSs to specify the enrollment effective date.

Respectfully submitted,



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Date: November 10, 2014

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